

**HSN Broadcasting of Southern California, Inc. and HSN Telemations, Inc., Joint Employers d/b/a KHSC-TV and National Association of Broadcast Employees and Technicians, Local No. 53, AFL-CIO and National Association of Broadcast Employees and Technicians, AFL-CIO, Party in Interest.** Case 31-CA-19641

March 12, 1993

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

**DECISION AND ORDER**

On December 31, 1992, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 31-RC-6907. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On February 8, 1993, the General Counsel filed a Motion for Summary Judgment. On February 10, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its objections to the election and the Board's disposition of certain challenged ballots in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.<sup>1</sup> We therefore find that the Respondent has

<sup>1</sup> In its opposition to the Motion for Summary Judgment the Respondent claims to have new evidence regarding the eligibility of one of the voters in the underlying representation case. The Respondent claims that this new evidence reveals that Bonder, one of

not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). There are no factual issues regarding the Union's request for information because the Respondent admitted that it refused to furnish the information. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

HSN Broadcasting of Southern California, Inc., and HSN Telemations, Inc. are now, and have been at all times material, corporations duly organized under and existing by virtue of the laws of the State of Delaware, with offices and principal places of business located in Ontario, California, where they are engaged in the operation of a television broadcasting station. Collectively, in the course and conduct of their business operations, the Respondents annually purchase and receive goods or services valued in excess of \$50,000 directly from suppliers located outside the State of California and derived gross revenues in excess of \$100,000.

At all material times HSN Broadcasting and HSN Telemations have processed and exercised control over the labor relations policy of KHSC-TV and administered a common labor policy for the employees of KHSC-TV.

At all material times HSN Broadcasting and HSN Telemations have been joint employers of the employees of KHSC-TV.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

the two challenged voters in the underlying election proceeding, was not employed on the date of the election. Therefore, the vote of seven to six for the Union would be altered and a new election should be conducted. Upon examination of the Respondent's "new" evidence, a dismissal letter in Case 31-CA-19417 dated July 30, 1992, we find that it was previously available and not newly discovered. The Respondent's assertion that it had already filed its exceptions to the report on challenges and objections at the time the dismissal letter issued begs the question. The Respondent was free to submit this evidence to the Board in supplementation of its July 13, 1992 exceptions and its July 27, 1992 reply brief. The Board's decision did not issue until September 25, 1992. Moreover, the existence of the dismissal letter does not constitute a special circumstance warranting reexamination of the underlying case. We note, in fact, that the dismissal letter states that Bonder was a part-time employee at the time of the representation election. Accordingly, even were it appropriately before the Board, it would not support the Respondent's claim.

## II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held May 1, 1992, the Union was certified on October 15, 1992, as the collective-bargaining representative of the employees in the following appropriate unit:

**INCLUDED:** All Technical Operators/Switchers/Production Assistants, Editors, Producers and Maintenance Engineers employed by the Employer at their Ontario, California facility.

**EXCLUDED:** All other employees, Office Clerical Employees, Chief Engineer, Assistant Chief Engineer, Guards and Supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since October 22, 1992, the Union has requested the Respondent to bargain and to furnish information, and since October 22, 1992, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By refusing on and after October 22, 1992, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, HSN Broadcasting of Southern California, Inc. and HSN Telemations, Inc., Joint Employers d/b/a KHSC-TV, Ontario, California, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain with National Association of Broadcast Employees and Technicians, Local No. 53, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

**INCLUDED:** All Technical Operators/Switchers/Production Assistants, Editors, Producers and Maintenance Engineers employed by the Employer at their Ontario, California facility.

**EXCLUDED:** All other employees, Office Clerical Employees, Chief Engineer, Assistant Chief Engineer, Guards and Supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Ontario, California, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with National Association of Broadcast Employees and Technicians, Local No. 53, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

INCLUDED: All Technical Operators/Switchers/Production Assistants, Editors, Producers and Maintenance Engineers employed by us at our Ontario, California facility.

EXCLUDED: All other employees, Office Clerical Employees, Chief Engineer, Assistant Chief Engineer, Guards and Supervisors as defined in the Act.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

HSN BROADCASTING OF SOUTHERN  
CALIFORNIA, INC. AND HSN TELE-  
MATIONS, INC., JOINT EMPLOYERS D/B/A  
KHSC-TV